

REMARKS

Claims 8, 9, 15-27, 32 and 33 stand withdrawn as directed to non-elected subject matter. Claims 1-7, 10-14, 28-31 and 34 have been canceled without prejudice to Applicants' right to pursue the subject matter of the canceled claims in subsequently filed continuing and/or divisional applications. New claims 35, 36, 37, 38, 39 and 40 have been added. Support for the new claims can be found throughout the specification and claims as filed. No new matter has been added. Applicants request entry of the present amendment.

Rejections under 35 U.S.C. § 112

Claims 1-7, 10-13, 28-31 and 34 stand rejected as allegedly failing to comply with the enablement and written description requirements of 35 U.S.C. 112, first paragraph. While Applicants traverse these rejections, it is noted that these rejections are moot with regard to canceled claims 1-7, 10-13, 28-31 and 34. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Applicants note that new claims 35-40 no longer claim a "vector" nor recite limitations such as "same functional activity" or "significant amount of homology." The pending claims are limited to tobacco cells, and methods of producing transgenic tobacco plants, that express *Arabidopsis thaliana* MinD or MinE polypeptides and are characterized as having only one or a few large chloroplasts. Applicants submit that the new claims are fully supported by the specification and claims as filed.

Claims 1-7, 10-13, 28-31 and 34 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant's regard as the invention. While Applicants traverse these rejections, it is noted that these rejections are moot with regard to canceled claims 1-7, 10-13, 28-31 and 34. Accordingly, Applicants respectfully request that the rejection be withdrawn. Further, it is believed that the new claims provided with this amendment put the application in condition for allowance.

Rejections under 35 U.S.C. §102

Claims 1-7, 10-13, 28-31 and 34 stand rejected under 35 U.S.C. 102(a) as allegedly anticipated by Colletti *et al.* (2000, *Curr. Biol.* 10:507-516), Kanamaru et al. (2000, *Plant Cell Physiol.* 41:1119-1128 and GenBank Accession No. AB030278, December 2000) or Osteryoung et al. (US Patent No. 6,982,364). While Applicants traverse these rejections, it is noted that these rejections are moot with regard to canceled claims 1-7, 10-13, 28-31 and 34. Accordingly, Applicants respectfully request that these rejections be withdrawn.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Spada*, 15 USPQ2d 1655 (Fed. Cir. 1990). New claims 35 and 39 recite an isolated transgenic tobacco plant cell, and method of producing a transgenic tobacco plant, by expressing *Arabidopsis thaliana* MinD or MinE polypeptides in such a cell. Applicants submit that none of the cited references teach a tobacco plant cell expressing either of the above polypeptides nor do they teach a tobacco plant cell that includes only one or a few large chloroplasts. Accordingly, the cited references fail to anticipate the claim invention(s).

Applicants believe that the new claims as provided herein distinguish the present invention from the cited references of Colletti *et al.*, Kanamaru et al., and Osteryoung, and request allowance of the pending claims.

Conclusion

In summary, for the reasons set forth herein, Applicants maintain that claims 35, 36, 37, 38, 39 and 40 clearly and patentably define the invention. Applicants request that the Examiner reconsider and withdraw the various grounds for rejection set forth in the Office Action.


If the Examiner would like to discuss any of the issues raised in the Office Action, Applicants' representative can be reached at (703) 836-6620. Enclosed herewith is a request for a two-month extension of time, along with the required fee. Should any additional fees be required, the Commissioner is authorized to charge deficiencies or credit any overpayment to Deposit Account No. 02-4800.

Respectfully submitted,

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